maintained the substantial identity of the phrases "suicide" and "death by his own hand," as previously decided in *Ins. Co.* v. *Terry*, 15 Wall. 580, and held that the plain import and purpose of the introduction of the clause in question were, because the line between sanity and insanity is often shadowy and difficult to define, to take the subject from the domain of controversy and by stipulation exclude all liability by reason of the death of the party by his own act whether he was at the time a responsible moral agent or not. "Nothing can be clearer," says the learned judge, "than that the words sane or insane were introduced for the purpose of excepting from the operation of the policy any intended self-destruction, whether the insured was of sound mind or in a state of insanity. These words have a precise, definite, well-understood meaning. * * * It is unnecessary to discuss the various phases of insanity in order to see whether a possible state of circumstances might not arise which would defeat the condition. It will be time to decide this question when such a case is presented. For the purposes of this suit it is enough to say that if the assured was conscious of the physical nature of the act he was committing, and intended by it to cause his death, the policy is avoided, although at the time he was incapable of judging between right and wrong and did not understand the moral consequences of what he was doing. Any other construction would deny to the insurance companies the right to declare the sense in which they used words of limitation in their policies."

The general adoption of this clause by insurers, and a similar construction of it by the courts, would seem to open a way to uniformity in the rules of law upon this increasingly important subject; a most desirable result, which, except in some such mode, would seem to be at present almost beyond hope of attainment.

C. H. H.

Supreme Court of Minnesota.

THE STATE EX REL. BAXTER *v.* L. M. BROWN.

A day, in its ordinary meaning, is the space of twenty-four hours from midnight to midnight.

Where a constitution provides for an election to fill a vacancy in the office of judge "at the first election that occurs more than thirty days after the vacancy shall have happened," the word "days" must be taken to be used in its ordinary meaning; and therefore neither the day on which the vacancy happens nor the day of the election can be included in computing the time.

QUO WARRANTO. ANDREW G. CHATFIELD, judge of the Eighth Circuit, died October 3d 1875, and on October 27th the respondent was appointed to the vacancy thus caused, and entered on the duties of the office. At the general election, held November 2d 1875, the relator, Luther L. Baxter, was elected to the office of judge of the Eighth Circuit, and was duly qualified, but the respondent claiming to hold and exercise the office, this proceeding

was instituted to determine the title of the respective parties. To the petition setting forth the foregoing facts, the respondent demurred.

Sect. 10, Art. VI. of the Constitution of Minnesota, provides that: "In case the office of any judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is entitled and qualified. And such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened."

The opinion of the court was delivered by

BERRY, J.—The determination of the present controversy depends upon the meaning to be attributed to the words "more than thirty days after the vacancy shall have happened."

A day is the space of twenty-four hours from midnight to midnight. This is the ordinary and popular meaning of the word, and therefore, primâ facie, the sense in which it must be taken to have been used in our state constitution, which, as it was made by the people, should be understood as they understood it. Applying this definition to the constitutional provision in hand, it follows that neither the 3d day of October (the date of Judge CHATFIELD'S death), nor the 2d day of November (the date of the election), can be counted as one of the thirty days mentioned in the constitution. Neither that portion of October 3d which remained after the hour of Judge CHATFIELD'S death, nor that part of November 2d which preceded the hour of opening or closing the polls, was a space of twenty-four hours from midnight to midnight.

Neither could a space of twenty-four hours from midnight to midnight be made up by putting the fraction of October 3d and that of November 2d together.

This construction necessarily leads to the conclusion that the election of the relator, L. L. Baxter, is void. This conclusion is, we think, sustained by a consideration of the object of the constitutional provision in question. While the general purpose of the constitution is to make judicial offices elective, this purpose is qualified by the provisions of section 10. As a part of qualification the last sentence of the section is evidently inserted in appreciation of the great importance of judicial offices, and of the consequent necessity that the electors, before being called upon to fill

them, shall have such time for inquiry and consideration as will enable them to act with reasonable prudence and good sense in the premises.

The evil sought to be provided against was therefore such as would result from an election occurring *too soon* after the happening of a vacancy, rather than such as would follow from deferring an election too long.

If, as respects the question of computation of time, the language of the constitution were *per se* so ambiguous as to admit of two constructions equally plausible, it is upon the foregoing considerations clear that the construction should be adopted which will beyond an peradventure accomplish this purpose of the constitution.

This will require the construction which would give the electors the longest time for deliberation, that is to say, which would give them thirty clear days between the day when the vacancy happened and the day of the election.

This construction has the further advantage of relieving cases of this kind from the obvious practical difficulties and embarrassments which not unfrequently might arise if it were held to be either necessary or proper to take into consideration fractions of a day, in computing the thirty days required by the constitution.

It follows from the foregoing views that the respondent is entitled to the office of judge of the Eighth Judicial District.

Judgment for the respondent on the demurrer.

Some of the expressions of the learned judge in the foregoing opinion, especially his definition of a day as "the space of twenty-four hours from midnight to midnight," appear at first sight as contrary to the common-law rule that in legal computation there are no fractions of a day. Something, however, may be conceded to the liberality of construction always accorded to constitutional provisions. Thus in the *Opinion of the Supreme Court of New Hampshire*, on the Soldier's Voting Bill, 4 Am. Law Reg. N. S. 212, it was held that the days given by the constitution to the governor to return bills to the legislature without his approval are days of twenty-four hours each, and a veto would be in time if delivered to the speaker on the last day, though after the legislative day had ended and the legislature adjourned.

The cases on the subject of the computation of time, with reference to including or excluding the day of a date or of an act done, are collected in the note to the *Opinion, &c.*, 4 Am. Law Reg. N. S. 222; and, after careful examination of the very conflicting decisions, both in England and in this country, the conclusion is arrived at that the better rule is to exclude from the computation the day of the act done.

The same subject, with special reference to the mode of counting the last day when it falls upon Sunday, is also

learnedly discussed in Mr. Marr's note to *Citizen's Bank* v. *Ober*, 10 Am. Law Reg. N. S. 44, in which the same conclusion is reached, that the day of the act done, as the starting point of the computation, should be excluded. It may indeed be said that although the decisions are still conflicting and the subject not free from doubt, yet the tendency of the later cases is clearly towards the rule already indicated, as more in accordance with reason and justice in the majority of cases, more in accordance with the settled rules of the commercial law and therefore tending to uniformity, and as affording a convenient practical rule easily applicable and free from refinements and disputes about the special circumstances of each case.

Applying this rule in the principal case and excluding October 3d as the day on which the vacancy occurred, November 2d was only the thirtieth day, and therefore the election was not *more than thirty days* after the vacancy as required by the constitution. The plain intent of that provision was, as is said by the learned judge, "to give the electors thirty *clear days* between the day when the vacancy happened and the day of the election." The case therefore was well decided on this ground without the necessity of resorting to the construction that requires a day to be necessarily of twenty-four hours from midnight to midnight; a construction that might in some cases be extremely inconvenient.

J.

Supreme Court of the United States.

RICHARD WINDSOR *v.* WILLIAM N. McVEIGH.

A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.

The jurisdiction acquired by the seizure of property in a proceeding *in rem* for its condemnation for alleged forfeiture is not to pass upon the question of forfeiture absolutely, but to pass upon that question after opportunity has been afforded to its owner and parties interested to appear and be heard upon the charges for which the forfeiture is claimed. To that end some notification of the proceedings, beyond that arising from the seizure, prescribing the time within which the appearance must be made, is essential.

In proceedings before the District Court in a confiscation case, monition and notice were issued and published, but the appearance of the owner, for which they called, when made was stricken out, his right to appear being denied by the court. *Held*, that the subsequent sentence of confiscation of his property was as inoperative upon his rights as though no monition or notice had ever been issued. The legal effect of striking out his appearance was to recall the monition and notice as to him.

The doctrine that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend in the extent or character of its judgment the law which is applicable to it.